

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DWAYNE E. BROOKS,

Petitioner,

v.

WILLIAM A. LEE,

Respondent.

Case No. 12-CV-2023 (KMK) (JCM)

ORDER ADOPTING R&R

KENNETH M. KARAS, District Judge:

On March 16, 2012, Petitioner Dwayne E. Brooks ("Petitioner"), proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his October 31, 2007 judgment of conviction in New York state court and his aggregate term of imprisonment of 25 years in prison and five years post-release supervision after being convicted of manslaughter in the first degree and criminal possession of a weapon in the third degree. (Dkt. No. 2.) On February 15, 2013, Petitioner filed an amended petition. (Dkt. No. 12.)

On December 19, 2016, Magistrate Judge Judith C. McCarthy entered a thorough Report & Recommendation ("R&R") recommending that this Court deny Petitioner's amended petition. (R&R 31 (Dkt. No. 21).) In the R&R, Magistrate Judge McCarthy provides notice that objections to the R&R were due within 17 days, and that failure to object would preclude later appellate review of any order of judgment that will be entered. (*Id.* at 32.) No objections have been filed.

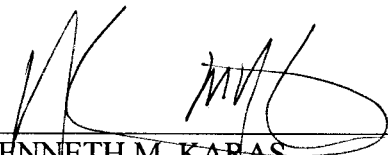
When a petitioner does not file any objections, the Court reviews an R&R for clear error. *See Rose v. Rivera*, No. 08-CV-6027, 2011 WL 3874718, at *1 (S.D.N.Y. Sept. 2, 2011). The Court has reviewed the R&R and finds no error, clear or otherwise.

The Court therefore adopts the R&R in its entirety and denies Petitioner's writ of habeas corpus. Because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c)(2); *Lucidore v. N.Y. State Div. of Parole*, 209 F.3d 107, 111–12 (2d Cir. 2000). In addition, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962) (“We consider a defendant's good faith . . . demonstrated when he seeks appellate review of any issue not frivolous.”); *Burda Media Inc. v. Blumenberg*, 731 F. Supp. 2d 321, 322–23 (S.D.N.Y. 2010) (citing *Coppedge* and noting that an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith).

The Clerk of Court is respectfully directed to enter a judgment in favor of Respondent and to close this case.

SO ORDERED.

DATED: January 21, 2017
White Plains, New York


KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE